

**TITLE 450: DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES**

CHAPTER 15: CONSUMER RIGHTS

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-2. Definitions

The following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or
- (F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer; or
- (G) verbal abuse.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Comprehensive Basis of Accounting" means a system of accounting other than GAAP, including but not limited to statutory basis, cash basis, or tax basis.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts.

"Consumer committee" or **"Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a

State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

~~"Comprehensive Basis of Accounting"~~ ~~means a system of accounting other than GAAP, including but not limited to statutory basis, cash basis, or tax basis.~~

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse services.

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports or peer review documents; and

(ii) Information compiled in anticipation of litigation.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours, excluding weekends and

holidays, except upon a court order authorizing detention beyond a one hundred twenty-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contracts to provide the physical custody, detention or treatment of consumers.

"Generally Acceptable Accounting Principles" or **"GAAP"** means the authoritative set of accounting principles, standards, and procedures.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"Licensed mental health professional" ~~or~~ **"LMHP"** means a practitioner who meets qualifications as defined in Title 43A §1-103 (11).

"Maltreatment" ~~is used collectively in this Subchapter to refer to~~means abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, verbal abuse, and rights ~~violation~~violations.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that results in or creates an unreasonable risk of harm to a consumer and that also:

- (A) violates a statute, regulation, written rule, policy, procedure, directive, or accepted professional standards and practices; or
- (B) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

- (A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;
- (B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. §256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. §256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Program of Assertive Community Treatment" or "PACT" is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or "Resident government" means any established group within the facility comprised of residents, led by residents and which meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or "RCF" means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, which is certified pursuant to 43 O.S. §3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" ~~refers to~~means manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier, or some other means.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to, suicide, homicide, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur

at any time while an outpatient consumer is an active consumer and within seventy-two (72) hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Sexual abuse" ~~includes~~means:

- (A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;
- (B) oral, anal or vaginal penetration of a consumer by staff;
- (C) the anal or vaginal penetration of a consumer by staff with any other object; or
- (D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or
- (E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer ~~includes~~means:

- (A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or
- (B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Treatment Advocate" ~~is~~means a family member or other concerned individual designated by a consumer to participate in treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse"~~abuse~~ means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-6. ~~Right to communication~~Communications and social contacts

(a) Consumers in inpatient settings are encouraged to engage with family and friends. Consumers are entitled to correspondence and visitation when clinically appropriate.

(b) Consumers admitted voluntarily and consumers admitted under emergency detention status are entitled to unimpeded, private and uncensored communication with persons of their choice unless a consumer's treatment team concludes that such communication is not clinically appropriate and documents reasons for this conclusion in the clinical record.

(c) Communication and visitation for all consumers, by phone or face-to-face, with legal counsel or clergy shall not be limited except as requested by individual attorneys or clergy members.

~~(a)~~(d) ~~Every consumer~~Consumers admitted voluntarily and consumers admitted under emergency detention status shall be allowed to contact one individual immediately upon entry into such place of detention or admission for purposes of notification of the consumer's location (43A O.S. § 5-201).

~~(b)~~ Every consumer is entitled to communicate by uncensored, sealed mail.

~~(1) Each program shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure the same.~~

~~(2) The facility director may establish procedure regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety precautions. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's record.~~

~~(3) No correspondence shall be placed in the consumer's record or any program record without the written consent of the consumer.~~

(e) Each facility shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure these items. The facility director may establish procedures regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's clinical record.

~~(c)~~ Every consumer is entitled to unimpeded, private and uncensored communication by telephone and by personal visit with persons of his or her choice.

~~(1) Each program shall make telephones readily available within the facility to ensure calls can be conveniently made and received.~~

~~(2) Each program shall establish in writing reasonable times and places for the use of telephones and for visitation and communicate such to consumers and the consumer's family or friends. Each program shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.~~

~~(3) Telephone usage and visitation may be limited as determined by the treatment team for a therapeutic reason and documented in the consumer's record. Limitations shall be reviewed at each treatment team meeting and shall not continue longer than therapeutically necessary. Limitations shall not be for punitive reason.~~

(f) Each facility shall establish in writing reasonable times and places for the use of telephones and for visitation to consumers and treatment advocates. Each facility shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.

(g) Telephone usage and visitation may be limited in addition to the provisions in (f) of this Section as determined by the treatment team for therapeutic reasons, which shall be documented in the clinical record. Limitations shall be reviewed at each treatment team meeting and shall not continue longer than clinically necessary. Limitations shall not be implemented for punitive reasons.

(h) Visitation using a HIPAA-compliant video conferencing platform in addition to in-person visitation shall be used to promote consumer engagement with family and friends when clinically appropriate.

450:15-3-14. Right to treatment

(a) Each consumer shall be provided with prompt, competent and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. Consumers who have problems in multiple domains shall be provided with appropriately integrated attention to all of their needs within the context of the treatment program. Each consumer shall be afforded treatment by sufficient numbers of duly qualified facility personnel that meet applicable licensing or certification or accreditation standards and conform to applicable rules of ODMHSAS.

(b) Each consumer or his or her legal guardian shall have the opportunity to be involved in the consumer's treatment. An individual of the consumer's choice shall have the opportunity to be involved in the consumer's treatment with the consent of the consumer.

(c) Each consumer shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.

(d) Each consumer shall have sufficient access during treatment to all prescribed and over-the-counter medications that allows for administration of the consumer's medications as prescribed or instructed by medical personnel and/or drug labels, with the exception that a physician within the treatment facility may provide consultation to the consumer regarding adverse reactions to the medication regimen and revise the medication regimen based on concerns regarding safety to the consumer. The consumer shall be informed of any changes made and such situations shall be documented in the consumer's record, including documentation of how the consumer was informed.

~~(d)~~(e) If the consumer is involuntarily committed, consideration shall also be given to whether the conditions that resulted in the consumer's commitment still exist.

~~(e)~~(f) Each consumer shall be informed of his or her proposed and ongoing treatment, including participation in his or her treatment plan and of the reasonable expectations and consequences of his or her following or not following the plan.

~~(f)~~(g) Each consumer who has a co-occurring disorder shall receive services for those disorders. No program shall deny services to a consumer for any disorder solely because that consumer is displaying symptoms of, or receiving treatment for a co-occurring disorder of another type.

~~(g)~~(h) Each consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, and the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.

~~(h)~~(i) Each consumer shall be informed of said rights including the right of each consumer voluntarily admitted to refuse treatment and the qualified right of an involuntary consumer to refuse treatment, which shall be noted in the consumer's record.

~~(i)~~(j) Each consumer shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.

~~(j)~~(k) In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others, the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's record.

~~(k)~~(l) Each consumer has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.

~~(l)~~(m) Each consumer shall not be subject to unnecessary, inappropriate or unsafe termination from treatment. Discharge shall not take place as punishment for displaying symptoms of the consumer's disorder.